IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 196 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAVDA GHANSHYAMJI & 3 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MC BAROT for Appellant(s) : 1 - 4.
MS DS PANDIT APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 13/08/2007

ORAL JUDGMENT

1. All the four appellants are the original accused of Sessions Case No.285 of 1992, who have been held guilty for the charge of offence punishable under Section 498 (A), 306 of Indian Penal Code and all the four appellants (Original accused) are sentenced to undergo R.I. for three years and to pay a fine of Rs.500/- each for each of the accused and in the event of nonpayment of fine, they are asked to undergo S.I. for one month. The appellants have challenged the legality and validity of the judgment and order of conviction and sentence passed by the learned trial Judge on various grounds as mentioned in para 5 of the memo of the appeal preferred by the present appellants under Section 374 read with 386 of the Criminal Procedure Code.

2. The appellant No.1 was the husband of the deceased Jashuba, appellant No.2 was the brother-in-law (elder brother of the appellant No.1), appellant No.3 and 4 are parents of appellant No.1 and were father-in-law and mother-in-law of the deceased Jashuba.

3. Yesterday, when the matter was listed for final hearing, Mr. Barot, learned advocate had taken me through the judgment and order under challenge as well as relevant portion of the evidence discussed by the learned trial Judge of one important witness examined by the prosecution vide Exhibit 22 i.e. P.W. 5 – Sendhaji. He had also taken me

through the relevant documentary evidence led by the prosecution. As the important witnesses i.e. original complainant – Maganji and family members of the deceased Jashuba, have not supported the case of the prosecution, the finding of guilt recorded by the learned trial Judge is erroneous finding, was the backbone of the submissions made by Mr. Barot, learned advocate. As the original Record and Proceedings were not before the Court and only paper book was available, Ms. Pandit, learned A.P.P. has prayed for time, so that she can go through the deposition of P.W. 5 – Sendhaji, especially in the background on fact stated by him in para 4 of his deposition because it was argued that this witness – Sendhaji ought not to have been believed as reliable witness. I have, therefore, heard Ms. Pandit, learned A.P.P.

4. According to Ms. Pandit, learned A.P.P., the learned trial Judge has placed reliance on the evidence of P.W. 5 – Sendhaji and it was open for the learned trial Judge to accept the version of one sole witness, if learned Presiding Judge is able to hear ring of truth in his version. He was 73 years old on the date of deposition and he had no reason to implicate the appellants in such serious offences. It is submitted that a pregnant lady i.e. victim Jashuba had no reason to commit suicide. Merely close relatives have not supported the case of the prosecution, the appellants should not be given any benefit of doubt because the learned

trial Court was supposed to read the entire set of evidence and it was open for the learned trial Judge to bank upon circumstantial evidence. It was the case of the prosecution that the victim deceased Jashuba was tortured and harassed as she was not given valuables on her marriage solemnised with the appellant No.1, which is popularly known as "Kariyavar" and for that, the victim deceased Jashuba was making grievances with her parents and close relatives including P.W. 5 – Sendhaji. The incident in question is of 8.5.1992 and the suicidal death is within 7 years from the marriage of the deceased Jashuba, so the Court was entitled to raise presumption available under Section 13 (A) of the Indian Evidence Act. So according to her, the findings recorded by the learned trial Judge are legal. Her alternative submission is that the appellant No.1 – husband was the main responsible person and his presence at the spot, where the victim deceased Jashuba committed suicide has been established by the prosecution. In that situation, at least the appeal of the appellant No.1 may be dismissed. The appellant No.2 had some burn injuries on his leg and the defence taken by the appellant No.2 is found inconsistent to the nature of injury that was noticed by the Doctor when he was sent for treatment during the course of investigation.

5. I have carefully gone through the oral as well as documentary

evidence. It is settled that the prosecution is supposed to establish the substratum of story placed while submitting the chargesheet under Section 173 of Criminal Procedure Code. It is the case of the prosecution that all the appellants were residing as members of a joint family and they were torturing the victim Jashuba for dowry. As per the customs of their caste, certain valuables popularly knows as “Kariyavar” were required to be given to the victim Jashuba, but as the mother of the victim Jashuba was suffering from cancer, the parents of the victim Jashuba were not able to arrange for such articles. Her marriage was arranged hurriedly and the appellants including appellant No.1 were promised that in future, the family of the victim Jashuba would give everything, which is required to be given as per the caste customs. The parents of the victim Jashuba were not able to give those things to the victim Jashuba and therefore, she was tortured and was being harassed by the appellants. So all these relevant aspects could have been proved by the cogent, legal and convincing evidence by the witnesses, who were parties in arranging the marriage and/or, who had participated in the marriage. To prove the repeated demand by the appellants or any of them, the prosecution would have led the evidence of the family members of the victim deceased Jashuba i.e. father, mother, brother or sister or any other close relative to prove that aspect.

6. P.W. 2 – Maganji Malji at Exhibit 19, father of the deceased Jashuba, P.W.3 – Kaluji, Exahibit 20, brother of the deceased were examined, but they have not supported the case of the prosecution. The things which have come on record, are in contradiction to the things proved by the prosecution and hence, cannot be read as substantial piece of evidence.

7. In the same way, Madhuben Karsanji, the sister of the deceased was examined vide Exhibit 21 has not supported the case of the prosecution.

8. It is pointed out by Mr. Barot, learned advocate that the question put before this witness Madhuben clearly reveals that she has also married in the family of the appellants. She has admitted that her in-laws and in-laws of Jashuba belong to the same family. She has denied a suggestion that she has deposed in favour of the appellants. It is possible for defence to argue in this fact situation that the said Madhuben, sister of the deceased may be treated as a defence witness as she was the real sister of the deceased Jashuba and when the real sister Madhuben knows to the family of the appellants has not supported the case of the prosecution. The learned trial Judge ought not to have held that there is satisfactory evidence to prove the fact of the demand of

dowry/Kariyavar.

9. The evidence of P.W. 5 – Sendhaji, Exhibit 22, does not inspire confidence. Of course, he has stated that the appellants were demanding "Kariyavar" as it was promised at the time of marriage of the victim Jashuba and he was informed about this aspect by the father of the deceased i.e. P.W.2 – Maganji, but when Maganji has neither stated anything in this regard in his deposition nor it was suggested by the Public Prosecutor while cross-examining him, the bare words of P.W.5 Sendhaji ought not to have been explained by him.

10. P.W. 5 – Sendhaji has clearly admitted in his cross-examination that Maganji had informed him that the victim Jashuba is being harassed, as "Kariyavar" has not been given to her, so it was his knowledge, which was dependent on the information given by Maganji. When Maganji has neither stated that he had informed Sendhaji in this regard nor Maganji has stated this fact during the deposition in the Court, it would not be safe for the Court to believe the version of Sendhaji as it is an uncorroborated testimony. It is true that uncorroborated testimony also can be accepted by the Court, but the plain reading of the evidence reveals that the victim Jashuba was residing with her in-laws and husband at village Vadasma of Tal.

Mehsana. Her parents i.e. family of P.W.2 – Maganji and Kaluji etc. were residing at village Dholasan. There is no evidence as to geographical distance between these two villages. P.W. 5 – Sendhaji, who has been believed by the Court as reliable witness was residing at Jamnapur. Now, again there is no evidence as to distance between Jamnapur and Dholasan or Vadasma and Jamnapur. In cross-examination, P.W. 5 – Sendhaji has stated that at time of the incident in the month of May, 1992, he was residing at village Jamnapur. He has also stated that after about 4 years of the marriage of the victim Jashuba, he went to Jamnapur village and since then, he went to reside at Jamnapur village. It is in evidence that the marriage of deceased Jashuba with accused No.1 had taken place in the year 1990. When it is the say of P.W. 5 – Sendhaji that the victim Jashuba was tortured by her in-laws, when he was told by Maganji first time about the same, ought to have been stated by this witness because plain reading of para 4 of the deposition creates an impression that this fact perhaps might have been told to Sendhaji after the incident because he has stated that Maganji had met him after coming from Mehsana Hospital and he had advised Maganji to file a complaint. So this is a case, where the learned trial Judge ought not to have placed reliance on the evidence of P.W. 5 – Sendhaji. He was 73 years of age on the date of deposition and there was no evidence to show that at the time of incident, he was resident of Jamnapur or any

other village. He has not stated in his examination-in-chief that he was residing prior to his shifting to Jamnapur or he was residing at either Dholasan or Vadsma, but it is clear that he had first hand information about any cruelty or torture to the victim Jashuba by her in-laws.

11. The theory placed by the defence side was of accident. The learned trial Judge has not accepted this theory and the learned trial Judge was right in arriving to that finding because there was ample evidence on record to show that the victim Jashuba must have poured kerosene on her and ablazed her with fire. The injury found on the body of appellant No.2 is sufficient to establish his presence at the spot or at the house or at least in the house, but there is no allegation against any of the appellants that any one of them poured kerosene on her. The appellant No.2 was elder brother of the husband of the victim Jashuba. The incident had occurred during the day time and normally the elder brother of the victim Jashuba had no reason to rush towards the deceased. This is not a circumstance inconsistent to the innocence because the obligation of prosecution is to establish that the appellants were responsible for abetting the ace of suicide and also it was required to be proved that they were harassing or torturing either physically or mentally to the victim Jashuba. None of the persons, who had participated in the marriage or in arranging the marriage has led any

evidence that the appellants had demanded dowry and that demand was differed for a given period. The victim Jashuba was a pregnant lady. There may be trifle reasons of such a conduct of the victim Jashuba. Perhaps the parents of the deceased have not supported the case of the prosecution where the fact of the dowry demand has not been proved beyond reasonable doubt and cogent evidence, the presumption under Section 313 (A) cannot be raised. It is strange that the appellants have not been held guilty of the said offence read with Sections 34 and 114 of Indian Penal Code. The judgment and order of conviction recorded by the learned trial Judge is of the nature that all the appellants have individually committed both these offences and therefore, they are held guilty for the charge of offence punishable under Sections 498 A, 306 in the individual capacity. Any gift or valuable that is given to the bride at the time of marriage or thereafter, does not fall in the definition of dowry and when the case of the prosecution is not clear that the so-called “Kariyavar” was to be given to the victim Jashuba on or before particular date or on festival, it would be risky for this Court to accept the case of the prosecution that torture given by any of the appellants must have gone for alleged demand of even “Kariyavar”.

12. It is observed by this Court and the Hon'ble Apex Court that in a number of cases that the prosecution cannot be asked to prove the

motive beyond doubt and in a given case, the prosecution is even the obligation to prove motive because the motive may be hidden in the mind of the appellants. In the same way, the deceased decided to commit suicide is difficult to presume, especially in the case of pregnant lady, that too residing in a joint family. So, when the close relatives of the deceased have not supported the case of the prosecution and there is no evidence in the nature of dying declaration on record, the learned trial Judge ought to have given benefit of doubt to the appellants. The learned trial Judge has committed a grave error in linking the appellants with the crime relying on the evidence of P.W. 5 – Sendhaji, by ignoring the answers given by that witness during the course of cross-examination. The prosecution cannot take advantage of the defence plea taken. It is true that falsity of defence is able to create circumstances and prosecution can take advantage of it to prove its case against them. But as observed earlier, the conduct of the appellant No.2 on the contrary when it is found consistent to his innocence and it is possible that he may have sustained this injury while rushing to rescue his younger brother's wife, the appellants were required to be acquitted by giving them benefit of doubt by the learned trial Judge.

13. In short, for the reasons afore stated, present appeal No. 196 of 1995 is allowed. The judgment and order dated 17.2.1995 rendered by

the learned Additional Sessions Judge, Mehsana, in Sessions Case No.285 of 1992 is quashed and set aside. The appellants - accused are ordered to be acquitted from all the charges levelled against them by giving them benefit of doubt. Fine, if paid by the appellants, is ordered to be refunded to each of the appellants on proper identification. Bail bond, if any, executed by each of the appellants shall stand discharged. Order and direction accordingly.

(C.K. BUCH, J.)

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